



**TIMELY FILED, THE COURT MAY DEEM THE RELIEF REQUESTED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT, OR THE NOTICED ACTION MAY BE TAKEN WITHOUT FURTHER HEARING.**

FFP Operating Partners, L.P., as reorganized pursuant to the confirmed Plan Proponents' Second Amended and Restated Joint Plan of Reorganization (the "Reorganized Debtor"), and FFP Properties, L.P. ("Properties") (the Reorganized Debtor and Properties, together the "Parties"), hereby file this Joint Motion to Compromise and Settle Claims and Causes of Action Pursuant to Federal Rule of Bankruptcy Procedure 9019 (the "Motion"). In support thereof, the Parties state the following:

## **I. JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the confirmed Plan Proponents' Second Amended and Restated Joint Plan of Reorganization (the "Plan"). This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A) and (B).

2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. This Motion is being filed to resolve substantial issues in the above-referenced Adversary Proceeding; however, in order to provide adequate and proper notice to creditors and parties-in-interest in the Debtor's bankruptcy, this Motion is filed in both the Adversary Proceeding and in the Debtor's main Bankruptcy Proceeding (capitalized terms defined below).

## **II. BACKGROUND**

### **A. General Background.**

4. On October 23, 2003, (the "Petition Date"), FFP Operating Partners, L.P. (as a debtor and debtor-in-possession, the "Debtor") filed a voluntary petition for relief under Chapter

11 of the Bankruptcy Code. The case is currently being administered under Case Number 03-90171-BJH-11 (the “Bankruptcy Proceeding”).

**B. Properties’ Proofs of Claim and Administrative Claims.**

5. Properties filed the proofs of claim within the Bankruptcy Proceeding that are identified below (collectively the “Proofs of Claim”). The Reorganized Debtor has objected to and disputed each of the Proofs of Claim in The Reorganized Debtor’s Sixth Omnibus Objection to Allowance of Claims (General Unsecured Claims) [Docket No. 2298]. Each of the Proofs of Claim filed by Properties are listed by claim number as follows:

<b>CLAIM NUMBER</b>	<b>DATE FILED</b>	<b>CLAIM AMOUNT</b>
476	03/09/2004	\$4,109,624.18
477	03/09/2004	\$1,101,906.48
569	08/31/2004	\$194,779.13
581	10/13/2004	\$514,243.00
621	11/18/2004	\$425,720.92
638	01/03/2005	\$17,682.81
639	01/03/2005	\$291,889.90
640	01/03/2005	\$13,689.60
641	01/03/2005	\$696,762.00
642	01/03/2005	\$6,844.80
809	09/21/2006	\$573,211.20
<b>Proof of Claim Total</b>		<b>\$7,946,354.02</b>

6. Properties has also filed several motions for the allowance and payment of administrative expenses within the Bankruptcy Proceeding that are identified below (collectively the “Administrative Claims”). The Debtor or Reorganized Debtor objected to the Administrative Claims as they were periodically filed in the Bankruptcy Proceeding. The Administrative Claims filed by Properties are listed by docket number as follows:

<b>DOCKET NUMBER</b>	<b>DATE FILED</b>	<b>AMOUNT</b>
957	09/09/2004	\$117,915.19
1030	10/14/2004	\$467,670.11
1102	11/18/2004	\$7,333.67
1103	11/18/2004	\$1,267.02
1205	01/03/2005	\$9,972.75
1206	01/03/2005	\$15,326.71
1369	04/11/2005	\$218,977.51
1562	07/22/2005	\$1,142.00
1618, 2048	08/17/2005	\$9,694.00
2281	09/21/2006	\$18,181.13
<b>Admin. Claims Total</b>		<b>\$867,480.09</b>

**C. The Adversary Proceeding.**

7. On October 23, 2005, The Official Committee of Unsecured Creditors, on behalf of the Debtor’s estate, as succeeded by the Reorganized Debtor, filed the present adversary proceeding (the “Adversary Proceeding”) against Properties [Docket No. 1 of the Adversary Proceeding], alleging that the Debtor’s estate was entitled to (a) avoid and recover certain

transfers pursuant to 11 U.S.C. §§ 547 and 550; (b) avoid and recover fraudulent transfers pursuant to 11 U.S.C. §§ 548 and 550; (c) recover certain loans, advances or transfers it made to Properties in an amount not less than \$4.6 million; and (d) the disallowance of the claims of Properties pursuant to 11 U.S.C. §502(d).

8. In response, Properties filed its Answer to Complaint for Money Damages and Other Relief on August 28, 2006 [Docket No. 20 of the Adversary Proceeding], contesting the allegations set forth in the Adversary Proceeding. In particular, Properties alleged that the transfers alleged to be avoidable (the “Transfers”) in the Adversary Proceeding were subject to Properties’ affirmative defenses to the same as set forth in the applicable sections of the Bankruptcy Code, including, without limitation, that reasonable equivalent value was given in exchange for those Transfers that the Reorganized Debtor sought to avoid under Section 548 of the Bankruptcy Code and that new value was given in return for any Transfers that the Reorganized Debtor sought to avoid under Section 547 of the Bankruptcy Code.

### **III. THE COMPROMISE AND SETTLEMENT AGREEMENT**

9. As set forth in more detail in the Global Compromise and Settlement Agreement annexed hereto as Exhibit “A” (the “Settlement”), the Reorganized Debtor and Properties have agreed to resolve each of the claims, issues, and causes of action that have been presented in the Adversary Proceeding, the Proofs of Claim, and the Administrative Claims, for an allowed administrative claim for Properties in the amount of \$500,000 (the “Allowed Administrative Claim”).

10. The consideration to be received by the Reorganized Debtor pursuant to the Settlement is in the form of Properties’ agreement to release and waive its right to all claims asserted in the case, including each of the Proofs of Claim (filed in the aggregate amount of

approximately \$7.95 million) and each of the Administrative Claims (filed in the aggregate amount of \$867,000).

11. If the Settlement is approved by the Court, the Administrative Claim will be paid by the Reorganized Debtor to Properties on the Effective Date.

#### **IV. REQUEST FOR RELIEF**

12. The Reorganized Debtor and Properties respectfully request the entry of an order approving the Settlement pursuant to Federal Rule of Bankruptcy Procedure 9019(a) ("Rule 9019(a)").

#### **V. BASIS FOR RELIEF REQUESTED**

13. Bankruptcy courts have the power to approve a settlement agreement pursuant to Rule 9019(a). A bankruptcy court should authorize the settlement of a dispute if it determines that the proposed settlement is fair and equitable and in the best interest of the estate. *Protective Comm. for Indep. Shareholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *In re Hanson Indus. Inc.*, 88 B.R. 942 (Bankr. D. Minn. 1988).

14. In determining whether a proposed compromise and settlement should be approved, the bankruptcy court need not conduct a "mini-trial on the merits of the settlement." *In re Drexel Burnham Lambert Group, Inc.*, 134 B.R. 493, 496 (Bankr. S.D.N.Y. 1991). Instead, the bankruptcy court need only "canvass the issues and see whether the settlement falls below the lowest point in the range of reasonableness." *Id.* at 497.

15. In determining whether a proposed settlement agreement is fair and equitable, a bankruptcy court should consider "all...factors relevant to a full and fair assessment of the

wisdom of the proposed compromise.” *TMT Trailer*, 390 U.S. at 424. In particular, bankruptcy courts routinely consider the following factors:

- a. the probability of success on the merits;
- b. the complexity and likely duration of the litigation;
- c. the cost of pursuing litigation;
- d. the competency and experience of counsel who support the settlement;
- e. the extent to which the settlement is the product of arm's length negotiation; and
- f. the paramount interest of unsecured creditors.

*See, e.g. In re RFE Indus., Inc.*, 283 F.3d 159, 165 (3rd Cir. 2002); *In re Jackson Brewing Co.*, 624 F.2d 605 (5th Cir. 1980).

16. As highlighted below, the Reorganized Debtor and Properties submit that with respect to the facts of the disputes, an application of the foregoing factors (specifically including those discussed below) favor approving the Settlement. In this case, the disputes between the Parties have been contested and the outcome of the Adversary Proceeding, the Proofs of Claim, and the Administrative Claims is highly unpredictable. Additionally, the costs of actually litigating the issues are anticipated to be high. The Settlement was reached after good faith negotiations by and between counsel and management for the Reorganized Debtor and Properties. Finally, the Reorganized Debtor believes that approval of the Settlement is in the best interests of all parties, including creditors of the Debtor's estate.

17. Probability of Success on the Merits. Both the Reorganized Debtor and Properties believe that their respective positions have some likelihood of success if the matters presented in the Adversary Proceeding, Proofs of Claim, and Administrative Claims are litigated; however, as with any complex litigation matter, success is not certain. There are many variables,

uncertainties, and unique issues of law and fact that could cause the litigation to swing either way on the pendulum. In this regard, Properties has alleged defenses that the Reorganized Debtor believes may have some merit, and the Reorganized Debtor has alleged viable theories of recovery that are legally and factually unique and complex. As such, in order to stem the risks associated with litigation, the parties believe the Settlement represents a fair and reasonable compromise and settlement of all of the issues between the Parties.

18. The Complexity and Likely Duration of the Litigation. The trial of the Adversary Proceeding, the Proofs of Claim, and the Administrative Claims will involve complex issues that will likely take an extended period of time to present to the Court. The Transfers that have been alleged to be avoidable are composed of hundreds of individual transfers that were made to or for the benefit of Properties. Likewise, the basis for the defenses asserted by Properties is found in numerous other alleged extensions of value to the Debtor by Properties. The factual proof for these matters is likely to take an extended amount of time and, if contested, a number of potential witnesses. Further, the legal basis for the relief sought by the Reorganized Debtor in the Adversary Proceeding involves issues that will result in additional proof that is likely to be complex and time-intensive, including, without limitation, the Reorganized Debtor's contention that the numerous leases that the Debtor had with Properties were at above-market lease rates, thus warranting the avoidance of any lease payments paid in excess of market rates. This issue, along with others at issue in the Adversary Proceeding, involves complex legal and factual issues that increase the specter of uncertainty for the Parties and the time required to fully try the issues.

19. The Costs of Pursuing the Litigation. By its very nature, litigation is expensive. A full and completed trial of the Adversary Proceeding, the Proofs of Claim, and the Administrative Claims will be no different. Thus far, the Parties have exchanged information



and held productive settlement discussions without expending significant amounts of funds. This, however, will change in the coming months if the Settlement is not approved. Depositions are currently scheduled during the month of January for both the Reorganized Debtor and Properties, the Reorganized Debtor has requested numerous documents from Properties, Properties has filed a motion for summary judgment which warrants a response by the Reorganized Debtor, and the trial preparation will commence in earnest towards the end of January. These matters will be highly expense for both sides.

20. The Paramount Interests of Unsecured Creditors. The Settlement is in the best interests of unsecured creditors. By and through the Settlement, the Reorganized Debtor will be settling filed proofs of claim of approximately \$7.95 million and filed administrative claims of approximately \$867,000 in return for the Allowed Administrative Claim. Assuming an unsecured dividend of 7-10% (currently the Reorganized Debtor's estimated range of recovery) in the Bankruptcy Proceeding, the resolution of these claims will provide a significant benefit to other unsecured creditors in the Bankruptcy Case. Accordingly, the Reorganized Debtor submits that approval of the settlement is in the best interests of all creditors of the Debtor's estate.

## **VI. CONCLUSION**

21. Based on the forgoing, the Reorganized Debtor and Properties believe that the Settlement represents a fair, equitable, and reasonable compromise between the Reorganized Debtor and Properties and should be approved by the Court.

WHEREFORE, the Reorganized Debtor and Properties respectfully request that this Court enter an Order granting the relief sought herein, including the approval of the Settlement between the Reorganized Debtor and Properties as set forth in Exhibit "A" hereto, and grant any further relief which may be just and equitable.

Dated: January 19, 2007

Respectfully submitted,

/s/ Jason N. Bramlett

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**ATTORNEY FOR THE REORGANIZED  
DEBTOR**

/s/ Tim Truman

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Facsimile: (817) 428-9367

**ATTORNEY FOR REORGANIZED DEBTOR  
FFP PROPERTIES, L.P.**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 19<sup>th</sup> day of January, 2007, a copy of the foregoing was sent by first class mail, postage prepaid to those identified on the service list annexed to the version of this document filed with the Court.

/s/ Jason N. Bramlett

Jason N. Bramlett

**EXHIBIT “A”**

**GLOBAL COMPROMISE AND SETTLEMENT AGREEMENT**

## GLOBAL COMPROMISE AND SETTLEMENT AGREEMENT

This GLOBAL COMPROMISE AND SETTLEMENT AGREEMENT (the "Agreement") is entered into between FFP PROPERTIES, L.P. ("PROPERTIES") and FFP OPERATING PARTNERS, L.P., as reorganized pursuant to its confirmed plan of reorganization, (the "REORGANIZED DEBTOR") as of the 12<sup>th</sup> day of January, 2007.

WHEREAS, on October 23, 2003 (the "Petition Date"), FFP Operating Partners, L.P. (as a debtor and debtor-in-possession, the "Debtor") filed a voluntary Chapter 11 petition in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division (the "Bankruptcy Court"); the Debtor's case was administered under case number 03-90171-11 (the "Bankruptcy Proceeding");

WHEREAS, on or about October 14, 2005, the Committee, the Debtor, and certain other plan proponents filed the Second Amended and Restated Joint Plan of Reorganization (the "Plan");

WHEREAS, the Plan was confirmed by order of the Bankruptcy Court entered on October 21, 2005, and became effective on January 30, 2006 (the "Plan Effective Date") pursuant to its terms;

WHEREAS, pursuant to the Plan, certain assets and causes of action of the Debtor were transferred to the Reorganized Debtor, including, without limitation, claims and causes of action to recover certain transfers pursuant to 11 U.S.C. §§ 547-548;

WHEREAS, Properties filed the proofs of claim within the Bankruptcy Proceeding that are identified below (collectively, the "Proofs of Claim");

CLAIM NUMBER	DATE FILED	CLAIM AMOUNT
476	03/09/2004	\$4,109,624.18
477	03/09/2004	\$1,101,906.48
569	08/31/2004	\$194,779.13
581	10/13/2004	\$514,243.00
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641	01/03/2005	\$696,762.00
642	01/03/2005	\$6,844.80
809	09/21/2006	\$573,211.20
<b>Proof of Claim Total</b>		<b>\$7,946,354.02</b>

WHEREAS, the Reorganized Debtor has objected to and disputed each of the Proofs of Claim in the Reorganized Debtor's Sixth Omnibus Objection to Allowance of Claims (General Unsecured Claims) [Docket No. 2298];

WHEREAS, Properties has also filed several motions for the allowance and payment of administrative expenses within the Bankruptcy Proceeding that are identified below (collectively the "Administrative Claims"):

<b>DOCKET NUMBER</b>	<b>DATE FILED</b>	<b>AMOUNT</b>
957	09/09/2004	\$117,915.19
1030	10/14/2004	\$467,670.11
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2281	09/21/2006	\$18,181.13
<b>Admin. Claims Total</b>		<b>\$867,480.09</b>

WHEREAS, the Debtor or Reorganized Debtor objected to the Administrative Claims as

**COMPROMISE AND SETTLEMENT AGREEMENT**

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they were periodically filed in the Bankruptcy Proceeding;

WHEREAS, on October 23, 2005, The Official Committee of Unsecured Creditors, on behalf of the Debtor's estate, as succeeded by the Reorganized Debtor, filed the adversary proceeding (the "Adversary Proceeding") against Properties [Docket No. 1 of the Adversary Proceeding], alleging that the Debtor's estate was entitled to (a) avoid and recover certain transfers pursuant to 11 U.S.C. §§ 547 and 550; (b) avoid and recover fraudulent transfers pursuant to 11 U.S.C. §§ 548 and 550; (c) recover certain loans, advances or transfers it made to Properties in an amount not less than \$4.6 million; and (d) the disallowance of the claims of Properties pursuant to 11 U.S.C. §502(d);

WHEREAS, on or about March 13, 2006, the Bankruptcy Court entered its Agreed Order on Unopposed Motion to Substitute FFP Operating Partners, L.P. as Reorganized, as Plaintiff in the Adversary Proceeding;

WHEREAS, Properties filed its Answer to Complaint for Money Damages and Other Relief on August 28, 2006 [Docket No. 20 of the Adversary Proceeding], contesting the allegations set forth in the Adversary Proceeding and alleging that the transfers alleged to be avoidable (the "Transfers") in the Adversary Proceeding were subject to Properties' affirmative defenses to the same as set forth in the applicable sections of the Bankruptcy Code, including, without limitation, that reasonable equivalent value was given in exchange for those Transfers that the Reorganized Debtor sought to avoid under Section 548 of the Bankruptcy Code and that new value was given in return for any Transfers that the Reorganized Debtor sought to avoid under Section 547 of the Bankruptcy Code;

WHEREAS, the Reorganized Debtor and Properties have conducted negotiations in good faith and to avoid the expense, inconvenience, delay and uncertainty of possible litigation, and have reached an agreement to fully and completely resolve their claims against each other on the terms and conditions set forth herein.

NOW, THEREFORE, in return for the releases, covenants and payments set forth herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Reorganized Debtor and Properties agree as follows:

1. Effective Date. This Global Compromise and Settlement Agreement shall not become effective between the Parties until the later of (a) the eleventh (11<sup>th</sup>) day after the Bankruptcy Court enters an order approving the terms and conditions hereof pursuant to that certain Joint Motion to Compromise and Settle Claims and Causes of Action Pursuant to Federal Rule of Bankruptcy Procedure 9019 or (b) all appeals, motions for rehearing, or other requests for review have been disposed of and any order approving this Global Compromise and Settlement Agreement has become final and unappealable (the "Effective Date").
2. Settlement Consideration. In consideration for the releases, waivers, and other terms and conditions set forth below, Properties shall have an allowed administrative claim in the Bankruptcy Proceeding in the amount of Five Hundred Thousand and No/100 Dollars (\$500,000.00), which shall be paid by the Reorganized Debtor to Properties on the Effective Date.

3. Releases.

(a) Properties' Release. Upon the Effective Date, Properties fully and forever releases the Debtor, the Reorganized Debtor, the Debtor's estate, and its or their respective officers, directors, successors, and all other persons acting for, under or in concert with them, past and present, of and from any and all claims, demands, actions, causes of action, obligations, damages, liabilities, loss, costs or expenses, including attorney's fees, of any kind or nature, whatsoever, past or present, ascertained or unascertained, matured or unmatured, suspected or claimed, arising from the Proofs of Claim, the Administrative Claims, any claims or defenses raised in the Adversary Proceeding or arising out of claims that could have been asserted therein, including, without limitation, any claims that could be asserted pursuant to 11 U.S.C. § 502(h), and all other claims which could have been asserted by and between Properties against the Reorganized Debtor or Debtor; provided, however, that Properties does not hereby waive, relinquish or in any way release any rights or obligations arising out of this Agreement.

(b) The Reorganized Debtor's Release. Upon the Effective Date, the Reorganized Debtor fully and forever releases Properties and its officers, directors, successors, and all other persons acting for, under or in concert with them, past and present, of and from any and all claims, demands, actions, causes of action, obligations, damages, liabilities, loss, costs or expenses, including attorney's fees, of any kind or nature, whatsoever, past or present, ascertained or unascertained, matured or unmatured, suspected or claimed, arising from the Adversary Proceeding, or the claims raised in the Adversary or arising out of claims that could have been asserted therein; provided, however, that the Reorganized Debtor does not hereby waive, relinquish or in any way release any rights or obligations arising out of this Agreement.

4. Dismissal of Adversary Proceeding. Within ten (10) calendar days of the Effective Date the Reorganized Debtor shall dismiss the Adversary Proceeding with prejudice.

5. Miscellaneous.

(a) Each party shall bear its own costs and attorneys' fees.

(b) Each person executing this Agreement represents that he or she is the authorized representative of the proper party to this Agreement and that he or she is authorized to execute this Agreement on behalf of the party so indicated.

(c) This Agreement constitutes the entire agreement of the parties hereto with respect to the settlement of the matter described herein, and may be amended only by the written agreement of each of the parties hereto.

(d) Nothing in this agreement shall constitute an admission of liability or an acknowledgement of any defense.

(e) This Agreement may be executed in multiple counterparts, each of which will be deemed an original and all of which shall constitute one and the same instrument. Facsimile and electronic signatures shall be treated as original signatures for all purposes.

- (f) Properties represents and warrants that it has not heretofore assigned or transferred, or purported to assign or transfer, to any person or entity any matter released hereunder or any portion thereof or interest therein, and Properties agrees to indemnify, defend and hold the Reorganized Debtor harmless from and against any and all claims based on or arising out of any such assignment or transfer.
- (g) The Reorganized Debtor represents and warrants that it has not heretofore assigned or transferred, or purported to assign or transfer, to any person or entity any matter released hereunder or any portion thereof or interest therein, and agrees to indemnify, defend and hold Properties harmless from and against any and all claims based on or arising out of any such assignment or transfer.
- (h) This Agreement shall be governed and construed in accordance with the applicable laws of the State of Texas.
- (i) Except as expressly stated herein, this Agreement shall inure to the benefit of, and shall be binding upon, each of the parties hereto and each of their successors, predecessors, assigns, respective agents, principals, servants, employees, officers, directors, members, shareholders, accountants, attorneys, representatives, parent or subsidiary companies, affiliated businesses, and all persons natural or corporate in privity, directly or indirectly, with them or any one of them.

**EXECUTED** as of the date first hereinabove written.

***[SIGNATURE PAGES TO FOLLOW]***




**FFP PROPERTIES, L.P.**

By: FFP Partners, L.P., its general partner

By: FFP Real Estate Trust, its general  
partner


By: \_\_\_\_\_  
Craig T. Scott, President

**FFP OPERATING PARTNERS, L.P.**

By:   
Mark Lipscomb,  
President, FFP Operating Partners, L.P.

**FFP PROPERTIES, L.P.**

By: FFP Partners, L.P., its general partner  
By: FFP Real Estate Trust, its general  
partner

By:   
Craig T. Scott, President

**FFP OPERATING PARTNERS, L.P.**

By: \_\_\_\_\_  
Mark Lipscomb,  
President, FFP Operating Partners, L.P.

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Daniel Hodges  
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*Unable To Deliver*

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